

1 Daniel H.R. Laguardia (SBN 314654)  
SHEARMAN & STERLING LLP  
2 535 Mission Street, 25th Floor  
San Francisco, CA 94105  
3 Telephone: (415) 616-1100  
Fax: (415) 616-1199  
4 Email: Daniel.Laguardia@shearman.com

5 Adam S. Hakki (admitted *pro hac vice*)  
Paula H. Anderson (admitted *pro hac vice*)  
6 SHEARMAN & STERLING LLP  
599 Lexington Avenue  
7 New York, New York 10022  
Telephone: (212) 848-4000  
8 Fax: (212) 848-7179  
Email: Adam.Hakki@shearman.com  
9 Paula.Anderson@shearman.com

10 *Attorneys for Defendant Twitter, Inc.*

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 WILLIAM HERESNIAK, on behalf of  
himself and all others similarly situated,

15 Plaintiff,

16 v.

17 ELON R. MUSK, X HOLDINGS I, INC., X  
18 HOLDINGS II, INC., and TWITTER, INC.,

19 Defendants.

Case No. 3:22-cv-03074

**DEFENDANT TWITTER, INC.'S  
JOINER IN THE MUSK DEFENDANTS'  
MOTIONS TO STAY DISCOVERY**

1 Defendant Twitter, Inc. (“Twitter”) joins in the motions to stay discovery filed by  
2 Defendants Elon R. Musk (“Musk”), X Holdings I, Inc., and X Holdings II, Inc. (collectively, the  
3 “Musk Defendants”)<sup>1</sup> with respect to the request that the Court stay discovery pending the final  
4 resolution of *Twitter, Inc. v. Elon R. Musk et al.*, C.A. No. 2022-0613 (Del. Ch.) (the “Twitter  
5 Delaware Action”) and *Luigi Crispo v. Elon R. Musk et al.*, C.A. No. 2022-0666 (Del. Ch.) (the  
6 “Stockholder Delaware Action”), or alternatively, pending a decision on Defendants’ motions to  
7 dismiss. *See* Dkt. 38 at 13; Dkt. 39 at 12-15.<sup>2</sup> In addition to the reasons set forth in the Musk  
8 Defendants’ motions to stay, Twitter believes the Court should, at a minimum, stay discovery  
9 pending a decision on the Defendants’ motions to dismiss for the following reasons:

10 *First*, Defendants have challenged Plaintiff’s standing, which implicates subject matter  
11 jurisdiction, and Plaintiff’s choice of forum. Discovery should not proceed until the Court decides  
12 these threshold jurisdictional and forum issues. *See Sladek v. City of Colorado Springs*, 2013 WL  
13 5526582, at \*2 (D. Colo. Oct. 7, 2013) (“Courts have routinely held that discovery should be stayed  
14 while the issues related to jurisdiction are being resolved.”); *Kellman v. Spokeo, Inc.*, 2022 WL  
15 1157500, at \*2 n. 1 (N.D. Cal. Apr. 19, 2022) (court ordered that discovery responses would not be  
16 due until after motions to dismiss based on lack of standing were decided); *Soto v. Castlerock Farm.*  
17 *& Transp., Inc.*, 282 F.R.D. 492, 503 (E.D. Cal. 2012) (denying discovery because plaintiff lacked  
18 standing); *Huang v. Futurewei Techs., Inc.*, 2018 WL 1993503, at \*4 (N.D. Cal. Apr. 27, 2018)  
19 (staying discovery prior to decision on motion to transfer based on a forum selection provision).

20 *Second*, Plaintiff has impermissibly attempted to circumvent the automatic stay of discovery  
21 under the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(b)(3)(B),  
22 by bringing certain claims in this action that the Musk Defendants have argued are barred by the

---

23 <sup>1</sup> The Musk Defendants filed separate motions to stay discovery in connection with their respective  
24 motions to dismiss. *See* Dkt. 38; Dkt. 39. The motion to stay discovery filed by Musk only joins the  
25 motion to stay discovery filed by X Holdings I, Inc. and X Holdings II, Inc. and does not present  
separate argument. *See* Dkt. 38 at 13.

26 <sup>2</sup> This case has been referred to Magistrate Judge Kim for “all discovery purposes.” Dkt. 28. Judge  
27 Kim’s standing order requires that parties present discovery disputes through a joint letter. To the  
28 extent the Musk Defendants’ motions to stay discovery are covered by the Court’s referral order,  
Twitter is prepared to submit a joint letter with Plaintiff and the Musk Defendants according to the  
procedure outlined in Judge Kim’s standing order.

1 Securities Litigation Uniform Standards Act (“SLUSA”), 15 U.S.C. § 78bb(f)(1). *See* Dkt. 38 at 13-  
2 15. “SLUSA’s purpose is to prevent plaintiffs from circumventing the PSLRA discovery stay.”  
3 *Salameh v. Tarsadia Hotels*, 2012 WL 12941995, at \*2 (S.D. Cal. July 2, 2012); *see also In re DOT*  
4 *Hill Sys. Sec. Litig.*, 594 F. Supp. 2d 1150, 1165 (S.D. Cal. 2008) (“circumvention of the stay of  
5 discovery of the [PSLRA] is a key abuse that [SLUSA] is designed to prevent”). If Plaintiff were  
6 allowed to proceed with discovery for claims barred by SLUSA while a motion to dismiss based on  
7 SLUSA is pending, it would undermine SLUSA’s purpose.

8 *Third*, Plaintiff should not be permitted to seek discovery if, as the Musk Defendants  
9 contend, Plaintiff’s claims are derivative in nature. *See* Dkt. 38 at 6-9, 15. Plaintiff cannot pursue  
10 derivative claims belonging to Twitter, or any related discovery, until he satisfies Rule 23.1. *In re*  
11 *Openwave Sys. Inc. S’holder Derivative Litig.*, 503 F. Supp. 2d 1341, 1353 (N.D. Cal. 2007)  
12 (granting motion to stay discovery until “plaintiffs are able to meet the requirements of Rule 23.1”).

13 Accordingly, the Court should stay discovery in this action pending resolution of the Twitter  
14 Delaware Action and the Stockholder Delaware Action, or alternatively, pending a decision on  
15 Defendants’ motions to dismiss.<sup>3</sup>

16  
17  
18  
19  
20  
21  
22  
23  
24  
25 <sup>3</sup> The Musk Defendants also ask that the Court stay discovery pending an action against Musk in  
26 the Southern District of New York. Twitter is not a party to that action and joins in the Musk  
27 Defendants’ motions to stay discovery only to the extent the motions request a stay of discovery  
28 pending final resolution of the Twitter Delaware Action and the Delaware Stockholder Action, or  
alternatively, pending a decision on Defendants’ motions to dismiss. Additionally, this joinder is  
limited to the relief sought in the Musk Defendants’ stay motions and the applicable legal grounds  
for such a stay. It is not a joinder in any characterization or statement related to the underlying facts  
or transactions or their substantive merits of any legal or equitable claim.

1 Dated: September 16, 2022

SHEARMAN & STERLING LLP

2

By: /s/ Adam S. Hakki

3

Adam S. Hakki

4

Daniel H.R. Laguardia (SBN 314654)

SHEARMAN & STERLING LLP

5

535 Mission Street, 25th Floor

San Francisco, CA 94105

6

Email: Daniel.Laguardia@shearman.com

7

Adam S. Hakki (admitted pro hac vice)

Paula H. Anderson (admitted pro hac vice)

8

SHEARMAN & STERLING LLP

9

599 Lexington Avenue

New York, New York 10022

10

Email: Adam.Hakki@shearman.com

11

Paula.Anderson@shearman.com

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

By: /s/ Daniel H.R. Laguardia  
Daniel H.R. Laguardia